

**TOWN OF ELSMERE
BOARD OF ADJUSTMENTS
MEETING MINUTES
JULY 22, 2008
6:30 P.M.**

PLEDGE OF ALLEGIANCE:

CALL TO ORDER:

ROLL CALL:

Board Member John Mitchell – Present
Board Member James Personti – Present
Board Member John Smith – Present
Board Member Thomas Manuel – Present
Chairman Paul Chalfant – Present

NEW BUSINESS:

The Board of Adjustments reviewed Petition 08-08, Tax Parcel
Number 1900200096

Mr. David Cresswell presented his proposal, making the current single driveway into a double driveway and install an additional small patio in the rear property.

Board Member Mitchell asked if any correspondence had been received in support or against the property.

Officer Keith Brown stated that no correspondence had been received.

Board Member Mitchell made it known that the Planning Commission has recommended approval.

ACTION: A motion was made by Board Member Mitchell to Approve Petition 08-08 for a variance to the allowable amount of lot coverage. The motion was seconded by Board Member Manuel.

VOTE:

Board Member Mitchell – Approve
Board Member Personti – Approve
Board Member Smith – Approve
Board Member Manuel – Approve
Chairman Chalfant – Approve

VOTE: 5-0, with 0 Absent, Motion carried

The Board of Adjustments reviewed Ordinance 496

Ordinance 496 was read for the record by the Chairman.

A Memorandum submitted by 5th District Councilwoman Joann Personti was read for the record by the Chairman.

Board Member Personti questioned the wording that gives the Code Enforcement Office the ability to write a separate citation every 24 Hours.

Town Manager John Giles explained that the ordinance was written to allow this, however in most cases the property owner would not receive a new citation every day, they would be given reasonable time to correct the violation. However if the citation caused a public hazard etc. the Code Enforcement Office may write a separate citation each day. He also explained that the time frame for correction was at the discretion of the Code Enforcement Officer.

Board Member Mitchell asked if the Board of Adjustments would be the appeal process to appeal a citation.

Town Manager John Giles stated that was correct and that the City of Wilmington found this to be very successful with a 5-10% appeal ratio. He also explained that the Citation would have a picture of the violation included, which deters people from appealing.

A discussion occurred regarding the appeal process and what it states is an acceptable reason for appeal.

Board Member Mitchell expressed his concern with the Instant Ticket Program being abused, and asked what the monitoring process would be to prevent this from happening.

Town Manager John Giles stated that in a case such as that he would step in and advise the Officer in question that they are taking the situation to far. He also explained how once the Ordinance is passed an internal Standard Operating Procedure would be put in place to help control and monitor the system so that it does not get abused. The policy will also clarify what is a property maintenance issue and what does not warrant an instant ticket.

Board Member Mitchell also asked why the Town has stopped writing violations and abating the problem if it continues, and placing a lean against the property.

Town Manager John Giles replied stating that in an extreme case the Town will take that action and abate the problem, however this will cut down on the time that the property stays in this condition. The old process stated the Town would need to issue a notice of violation, wait for the corrective date to pass, issue a criminal summons, wait for an arraignment date, then wait several months for a trial date. In the mean time the violation continues to grow and the court action prevents the Town from abating any problem. This will hopefully prevent that from happening and cut down on the number of violations that go to court. Any court action will become a civil citation compared to our current criminal citation. However in an extreme case we may still need to file a court summons on the property owner.

Board Member Personti asked if a lot of the violations that the Code Enforcement Office issues are based on resident complaints or are they based on driving down the street and seeing the violation and issuing a citation.

Officer Keith Brown responded when we are in the area and see a property that has a noticeable violation, a notice of violation is issued. Also if a resident calls and makes a complaint regarding a specific property we will go out and investigate.

The Board asked if these items would be brought up at a normal Board of Adjustments meeting or if there would be a special meeting called to hear the appeals.

Town Manager John Giles stated that he intends to place this as a normal Board of Adjustments Agenda Item and that a special meeting would be called only if there were too many appeals to hear at a regular meeting or if the severity of the citation warranted an immediate decision.

The Board came to a decision that if appeals are to be placed on a regular Board of Adjustments Agenda then the regular petitions would be heard first, they pay for the hearing and are following the code of the Town of Elsmere, and the appeals have violated a portion of the code of the Town of Elsmere.

Chairman Chalfant asked if each Board Member had a copy of the Appeals process, and asked that a copy please be given to each member.

Town Manager John Giles stated that Diana Poole Secretary to the Code Enforcement Office would get those distributed the following day.

ACTION: A motion was made by Board Member Mitchell to recommend approval of Ordinance 496 with a concern regarding the system being abused. The motion was seconded by Board Member Smith.

VOTE:

Board Member Personti – Approve
Board Member Mitchell – Approve
Board Member Smith – Approve
Board Member Manuel – Approve
Chairman Chalfant – Approve

VOTE: 5-0, with 0 Absent, Motion carried

APPROVAL OF MINUTES:

Minutes of the March 25, 2008 Board of Adjustments Meeting

ACTION: A motion was made by Board Member Smith to Approve the minutes of the March 25, 2008 Board of Adjustments Meeting as written. The motion was seconded by Board Member Personti.

VOTE:

Board Member Mitchell – Abstained
Board Member Personti – Approve
Board Member Smith – Approve
Board Member Manuel – Abstained
Chairman Chalfant – Approve

VOTE: 3-0, with 2 Abstained, Motion carried

Minutes of the April 22, 2008 Board of Adjustments Meeting

ACTION: A motion was made by Board Member Smith to Approve the minutes of the April 22, 2008 Board of Adjustments Meeting as written. The Motion was seconded by Board Member Personti.

VOTE:

Board Member Mitchell – Abstained
Board Member Personti – Approve
Board Member Manuel – Abstained
Board Member Smith – Approve
Chairman Chalfant – Approve

VOTE: 3-0, with 2 Abstained, Motion carried

Minutes of the May 27, 2008 Board of Adjustments Meeting

ACTION: A motion was made by Board Member Personti to Approve the minutes of the May 27, 2008 Board of Adjustments Meeting as written. The motion was seconded by Board Member Mitchell.

VOTE:

Board Member Mitchell – Approve
Board Member Personti – Approve
Board Member Smith – Approve
Board Member Manuel – Abstained
Chairman Chalfant – Approve

VOTE: 4-0, with 1 Abstained, Motion carried

NEW BUSINESS:

The Board of Adjustments reviewed a new law amending Title 22 of the Delaware Code

Law amending Title 22 of the Delaware Code was read for the record by the Town Manager.

Town Manager John Giles summarized the new law stating this would give the Town the right to grant an administrative variance to any applicant who has received a variance, and completed the project with a discrepancy that is within 1 sq. ft. of what was originally approved by the Board of Adjustments. The Town would approve this variance without the applicant having to appear before the Board again.

Town Manager John Giles stated he would be notifying the Mayor and Council about this new law at their August 2008 meeting.

The Board Adjustments reviewed the Comprehensive Plan.

Town Manager John Giles explained that we have less than 1 year to complete our revisions to the Comprehensive Plan and asked that the Board Members begin to review their assigned portions of the Code.

The Board was informed that the Town has had its first meeting with the state and is waiting for the written comments to be returned, and that the meeting was overall positive.

In January 2009 each Board Member is to have any revisions submitted to the Town so that they may begin the public meetings and the process of getting the Comprehensive Plan written and approved by June 2009.

Town Manager John Giles asked if any Board Members knew of a way to encourage public comment throughout this process, and stated that the public comment is an important part of our review process and how the state is very adamant about receiving public comment.

Chairman Chalfant asked that the Town Manager please distribute a written copy of the letter dated March 25, 2008 and the attachment that includes which Board Members will be reviewing the different portions of the code.

Chairman Chalfant read his notes that state the following Board Members will be reviewing the following sections of the Code:

Chapter 196 – Board Member Personti

Chapter 225-1 – 225-14 – Board Member Smith

Chapter 225-15 – 225-26 – Chairman Chalfant

Chapter 225- 27 – 225-38 – Board Member Mitchell

Chapter 225-39 – End including any and all attachments – Board Member Manuel

ITEMS SUBMITTED BY CHAIRMAN AND BOARD MEMBERS:

None

PUBLIC COMMENT:

None

ADJOURNMENT:

ACTION: A motion was made by Board Member Mitchell to adjourn. The motion was seconded by Board Member Personti.

VOTE:

Board Member Mitchell – Yes

Board Member Personti – Yes

Board Member Smith – Yes

Board Member Manuel – Yes

Chairman Chalfant – Yes

VOTE: 5 – 0, with 0 – Absent, Motion carried

At this time the meeting was adjourned.

These minutes summarize the agenda items and other issues discussed at the July 22, 2008 Board of Adjustments Meeting. Votes are recorded accurately. The audio tape(s) of this meeting will be available at Town Hall for a period of two years from the date these minutes are approved. The audio tape(s) may be reviewed at Town Hall by appointment and in accordance with the Freedom of Information Act.

PAUL CHALFANT, CHAIRMAN

JAMES PERSONTI, SECRETARY